

# HOUSE . . . . . No. 762

By Mr. O’Flaherty of Chelsea, petition of Eugene L. O’Flaherty relative to title protection for owners of improved land. The Judiciary.

## The Commonwealth of Massachusetts

In the Year Two Thousand and Five.

AN ACT TO PROVIDE LANDOWNER’S TITLE PROTECTION.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. The General Laws are hereby amended by  
2 inserting after Chapter 183B the following chapter:

3 **CHAPTER 183C.**  
4 **LANDOWNER’S TITLE PROTECTION ACT.**

5 Section 1. This chapter shall be known and may be cited as the  
6 Landowner’s Title Protection Act.

7 Section 2. As used in this chapter, the following words shall,  
8 unless the context otherwise requires, have the following meanings:

9 “Decree”, a decree, judgment or order of any court within the  
10 commonwealth including, but not limited to, a decree, judgment  
11 or order of the superior court or land court affecting an interest in  
12 land or a decree of judgment of the probate court allowing a will  
13 or appointing an administrator.

14 “Deed”, any type of instrument of conveyance, except a mort-  
15 gage or a tax taking by a municipality, including, but not limited  
16 to, a warranty, quitclaim, release, foreclosure, fiduciary, or com-  
17 missioner’s deed, or a sheriff’s deed or tax collector’s deed  
18 recorded subsequent to foreclosure of the right of redemption; or a  
19 treasure’s deed of low value land held under tax title, which is  
20 recorded subsequent to recording of a decree establishing title  
21 pursuant to section 80B of chapter 60, and one year has elapsed

22 after recording, in either case without any petition to vacate  
23 having been timely filed.

24 “Land”, any parcel or tract of unregistered land in the common-  
25 wealth, together with any and all buildings and other improve-  
26 ments thereon unless such buildings or improvements are  
27 expressly excepted therefrom.

28 “Origin of title”, a title transaction, other than a devise or probate  
29 court decree as to an intestacy or the allowance of a will, in the chain  
30 of title, containing language or, in the case of a decree, provisions  
31 sufficient to create or transfer the interest in land which forms the  
32 basis for the title to such land, and which was the most recent as of  
33 that date which is the beginning of the sufficiency period prior to the  
34 date on which the sufficiency is being determined.

35 “Recorded”, recorded in the appropriate registry of deeds or  
36 filed in the appropriate registry of probate.

37 “Records”, records of the registry of deeds for the county or  
38 district in which the land is located and of any registry of probate  
39 in the commonwealth.

40 “Sufficiency Period”, fifty years, except in those cases where  
41 a longer period is required pursuant to the provisions of para-  
42 graph (b) of section 3.

43 “Title transaction”, any transaction affecting title to any interest  
44 in land, including, but not limited to, any deed, grant, release,  
45 devise, instrument of taking by eminent domain, decree fore-  
46 closing redemption form a tax taking and other decree.

47 Section 3. (a) Any person having an interest in land, who has an  
48 unbroken chain of title to such interest for the sufficiency period  
49 or more, shall be deemed to have a good and clear record and  
50 marketable title to that interest, subject only to the provisions of  
51 section 4. An unbroken chain of title exists when the records dis-  
52 close: (i) the origin of title; and (ii) nothing in the records within  
53 or subsequent to the origin of title which purports to divest the  
54 person claiming the interest.

55 (b) If, within fifty years preceding the date on which the suffi-  
56 ciency of title is being determined, there appear to have been no  
57 title transaction, other than a devise or probate court decree as to  
58 an intestacy or the allowance of a will, relating to such interest  
59 or the land it affects, the sufficiency period shall be seventy-  
60 five years.

61 Section 4. A good and clear record and marketable title shall be  
62 subject to:

63 (a) any interest or encumbrance which is created by a title  
64 transaction and is within the chain of title of the origin of title on  
65 or subsequent to the effective date of the origin title.

66 (b) any interest or encumbrance which is created by a title  
67 transaction prior to the effective date of the origin of title only if  
68 the origin of title or subsequent recorded instrument specifically  
69 identifies either such prior interest or encumbrance or the instru-  
70 ment in the records wherein the interest or encumbrance was cre-  
71 ated, but a general reference to a title source such as “for our title  
72 see”, or “said land is the same described in”, or general phrases  
73 such as “subject to any rights, easements, restrictions and other  
74 matters, of record” or words or phrases of similar import, shall not  
75 be deemed a “specific identification therein” so as to preserve  
76 such interest or encumbrance;

77 (c) any right or easement granted to owners abutting private  
78 ways under section 5 of chapter 187;

79 (d) any right or easement granted, excepted or reserved by any  
80 instrument, if there is evidence of the existence of such right or ease-  
81 ment beneath, upon or above any part of the land described in such  
82 instrument, whether or not observable on or above the ground;

83 (e) any right or easement granted, excepted or reserved by any  
84 instrument, if there is evidence of the use of such right or ease-  
85 ment upon any part of the land;

86 (f) any interest or easement of any public utility corporation or  
87 any public service corporation organized and existing under  
88 chapter 158 or chapter 164;

89 (g) any reversionary interest of a lessor, or any interest of a suc-  
90 cessor of any lessor at the expiration of any lease;

91 (h) any interest of the United States, the commonwealth or any  
92 political subdivision, agency, authority or instrumentality of the  
93 commonwealth;

94 (i) the rights of any person arising from a twenty-year period of  
95 adverse possession or prescriptive use, which period was in whole  
96 or in part subsequent to the date of origin of title;

97 (j) conservation, preservation, agricultural preservation and  
98 affordable housing restrictions exempted under the provisions of  
99 clause (c) of the first paragraph of section 26 of chapter 184;

100 (k) any interest or instrument of record which has been created  
101 pursuant to section 6 of chapter 21E;

102 (l) any liens created pursuant to section 13 of said chapter 21E;

103 (m) any restriction, easement, condition or license held by any  
104 governmental body, as defined in section 26 of chapter 184, if the  
105 instrument imposing such restriction, easement, condition or  
106 license is duly recorded and indexed in the grantor index in the  
107 registry of deeds or registered in the registry district of the land  
108 court for the county or district wherein the land lies so as to affect  
109 its title, and describes the land by metes and bounds or by refer-  
110 ence to a recorded or registered plan showing its boundaries; and

111 (n) all interests preserved in chapter 185.

112 Section 5. Except as provided in section 4, all interests, the  
113 existence of which depend upon any title transaction that occurred  
114 prior to the effective date of the origin of title, however denomi-  
115 nated, whether legal or equitable, present or future, which inter-  
116 ests may be asserted by any person, whether or not under a  
117 disability, including but not limited to all rights of redemption in  
118 the case of taking or sale for the non-payment of real estate taxes,  
119 are hereby declared to be null and void with respect to the interest  
120 specified in section 3.

121 Section 6. Notwithstanding the foregoing, any person to whom  
122 a decree of confirmation under chapter 185 has been issued shall  
123 be deemed to have a good and clear record and marketable title as  
124 of the effective date of such decree subject only to the matters set  
125 forth in such decree and the matters enumerated in section 46 of  
126 chapter 185.

127 Section 7. This chapter shall be liberally construed to effectuate  
128 the legislative purpose of simplifying and facilitating title transac-  
129 tions by allowing persons to rely on a record chain of title as  
130 described in section 3, subject only to such limitations as appear  
131 in section 4.

132 Section 8. Except as herein specifically provided, nothing  
133 herein shall be construed to change the period for bringing an  
134 action or for doing any other required act under any statute of lim-  
135 itations or to affect the operations of any statute governing the  
136 effect of the recording or the failure to record any instrument  
137 affecting land.

1     SECTION 2. If the sufficiency period specified in section 3 of  
2 chapter 183C of the General Laws would expire prior to January 1,  
3 2006, such period shall be extended so as to expire on January 1,  
4 2006.

1     SECTION 3. This act shall take effect upon its passage and  
2 shall apply to instruments executed on, after and prior to said date.